

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF TENNESSEE**

3 **NICHOLAS MUNNELL,**

4 Plaintiff,

5 **v.**

6 **REWARD ZONE USA, LLC,**

7 Defendant.

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Civil Action No.:

2:21-cv-2037

JURY TRIAL DEMANDED

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10 **COMPLAINT**

11 NICHOLAS MUNNELL (“Plaintiff”), by and through his attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against REWARD ZONE USA, LLC (“Defendant”):

13 **INTRODUCTION**

14 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act, 47
15 U.S.C. § 227, *et seq.* (“TCPA”).

16 **JURISDICTION AND VENUE**

17 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331, which grants this court
18 original jurisdiction of all civil actions arising under the laws of the United States. See Mims v.
19 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

20 3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

21 **PARTIES**

22 4. Plaintiff is a natural person, who resides in Atoka, Tennessee 38004.

23 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).
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1 17. The TCPA prohibits placing calls using an automatic telephone dialing system or
2 automatically generated or prerecorded voice to a cellular telephone except where the caller has
3 the prior express consent of the called party to make such calls or where the call is made for
4 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

5 23. Defendant initiated multiple text messages to Plaintiff's cellular telephone
6 number using an automatic telephone dialing system.

7 24. The dialing system used by Defendant to call Plaintiff's cellular telephone calls
8 telephone numbers without being prompted by human intervention before each call.

9 25. The dialing system used by Defendant to call Plaintiff has the present and/or
10 future capacity to dial numbers in a random and/or sequential fashion.

11 26. Defendant's text messages were not made for "emergency purposes."

12 27. Defendant's text messages to Plaintiff's cellular telephone without any prior
13 express consent.

14 28. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do
15 Not Call Registry since July 26, 2016.

16 29. Defendant's acts as described above were done with malicious, intentional,
17 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
18 purpose of harassing Plaintiff.

19 30. The acts and/or omissions of Defendant were done unfairly, unlawfully,
20 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
21 legal justification or legal excuse.

1 31. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
2 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
3 damages.

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5 **COUNT II**
6 **Defendant Violated the TCPA 47 U.S.C. § 227(C)**

7 32. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
8 length herein.

9 33. The TCPA prohibits any person or entity of initiating any telephone solicitation to
10 a residential telephone subscriber who has registered his or her telephone number on the National
11 Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is
12 maintained by the Federal Government. 47 U.S.C. § 227(c).

13 34. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do
14 Not Call Registry since July 26, 2016.

15 35. Defendant texted Plaintiff on two or more occasions during a single calendar year
16 despite Plaintiff's registration on the Do Not Call list.

17 36. Defendant's acts as described above were done with malicious, intentional,
18 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
19 purpose of harassing Plaintiff.

20 37. The acts and/or omissions of Defendant were done unfairly, unlawfully,
21 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
22 legal justification or legal excuse.

23 38. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
24 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
25 damages.

1 **Wherefore**, Plaintiff, **NICHOLAS MUNNELL**, respectfully prays for judgment as
2 follows:

- 3 a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. §
4 227(b)(3)(A));
- 5 b. Statutory damages of \$500.00 per violative telephone call (as provided
6 under 47 U.S.C. § 227(b)(3)(B));
- 7 c. Additional statutory damages of \$500.00 per violative telephone call (as
8 provided under 47 U.S.C. § 227(C);
- 9 d. Treble damages of \$1,500.00 per violative telephone call (as provided
10 under 47 U.S.C. § 227(b)(3));
- 11 e. Additional treble damages of \$1,500.00 per violative telephone call (as
12 provided under 47 U.S.C. § 227(C);
- 13 f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c)
- 14 g. Any other relief this Honorable Court deems appropriate.
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18 **DEMAND FOR JURY TRIAL**

19 PLEASE TAKE NOTICE that Plaintiff, NICHOLAS MUNNELL, demands a jury trial
20 in this case.
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Respectfully submitted;

DATED: January 14, 2021

By: /s/ Amy Lynn Bennecoff Ginsburg
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